IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 150 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT - Applicant
Versus
MAHMAD HUSEN MAHMAD YUSUF MANSURI - Respondent

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Appearance :
MS NANDINI JOSHI, ADDITIONAL PUBLIC PROSECUTOR for Applicant.
MR RC JANI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 24/04/2006

ORAL JUDGMENT

1. Heard Ms. Nandini Joshi, learned Additional Public Prosecutor, for the applicant-State.

2. The State has preferred the present application

under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 against the order dated 31-12-2001 passed by the learned Additional Sessions Judge, Ahmedabad (Rural) at Gandhinagar in Criminal Miscellaneous Application No. 199 of 2001 for condonation of delay of 38 days in preferring the Criminal Revision Application against the order dated 02-06-2001 passed by the learned Judicial Magistrate (First Class), Gandhinagar in Criminal Miscellaneous Application No. 306 of 2000.

3. Ms. Nandini Joshi, learned Additional Public Prosecutor, submitted that the delay was satisfactorily explained in Criminal Miscellaneous Application No. 199 of 2001 before the learned Additional Sessions Judge, Gandhinagar and it is also explained in the present application preferred before this Hon'ble Court. In view of the above mentioned fact, the learned Additional Public Prosecutor submitted that the Criminal Revision Application requires to be allowed by quashing and setting aside the order passed by the learned Additional Sessions Judge.

4. When the matter was called out twice in the

first sitting as well as in the second sitting, Mr. R. C. Jani, learned Advocate for the opponent, has not remained present. However, the learned Advocate has filed a detailed affidavit-in-reply wherein the averments made in this Criminal Revision Application are controverted and it is submitted that the delay, which was caused, has not been satisfactorily explained by the State and thus, the Criminal Revision Application is without any substance and as there was negligence on the part of the State Government, this Criminal Revision Application is liable to be dismissed.

5. Taking into consideration the averments made in the application and the order passed below Exh. 1 by the learned Additional Sessions Judge in Criminal Miscellaneous Application No. 199 of 2001, the delay, as per the observation of the learned Judge, has not been explained. However, it has been contended by the learned Additional Public Prosecutor that in the application for condoning the delay before the learned Judge, the grounds for the delay caused in preferring the Criminal Revision Application are elaborately mentioned.

6. Be that as it may, the learned Judge ought to

have given an opportunity to the learned Additional Public Prosecutor to explain the delay. In the facts and circumstances of the case, the learned Additional Sessions Judge shall give opportunity to both the sides to make submissions after the affidavit is filed by the State Government explaining the delay in preferring the Criminal Revision Application.

7. With these observations, the order dated 31-12-2001 passed by the learned Additional Sessions Judge, Ahmedabad (Rural) at Gandhinagar in Criminal Miscellaneous Application No. 199 of 2001 is hereby quashed and set aside. The matter is remitted to the learned Additional Sessions Judge to pass necessary order after hearing both the sides. Rule is made absolute to the extent indicated hereinabove.

[H. B. ANTANI, J.]

/shamnath